

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7324 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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BHARATBHAI NARANBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner  
MR ND GOHIL ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1  
SERVED BY RPAD - (N) for Respondent No. 4

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/02/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 6.7.1998 passed by the District Magistrate, Banaskantha at Palanpur under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 and has prayed for quashing of the aforesaid order and immediate release of the petitioner.

The brief facts are that the impugned order of

detention was passed on 6.7.1998 but because the petitioner could not be arrested till 28.8.1998, the impugned order of detention and the grounds of detention could not be actually served on him before 28.8.1998. He is under detention since 28.8.1998 and the prescribed period of detention is going to expire within a couple of days.

From the grounds of detention it appears that licence for petrol, diesel pump of Arasuri Petroleum was issued in the name of Motibhai Parthabhai Bubadia who is managing the petrol pump. Surprise inspection was carried out on 26.6.1998. The petitioner was working as cashier and administrator on the said petrol pump and he was managing the affairs of the petrol, diesel pump. Certain irregularities highlighted in the grounds of detention were noticed. The diesel was found to be adulterated. Sample of diesel was collected and it was sent to forensic laboratory for examination. Adulteration was reported in the stock of diesel by the said laboratory. Considering the report that blue colour kerosene was adulterated in the diesel and further considering other material on record and alternative efficacious remedies the impugned detention order was passed.

The order of detention has been challenged only on two grounds.

The first ground is that the State Government submitted its report to the Central Government after two months which has rendered the detention order illegal. From series of counter affidavits filed by the respondents, it transpires that this contention has no force. The impugned detention order dated 6.7.1998 was approved by the State Government on 14.7.1998 vide para 3 of counter affidavit of Shri P.D.Shah, Under Secretary to the Government of Gujarat. From this para of the counter affidavit, it appears that report was sent by speed post letter which was factually incorrect and to this extent this para of the affidavit is false affidavit. Subsequently falsity was realised and it was clarified through another counter affidavit sworn on 18.2.1999, that because there was postal strike the report was sent by courier. Annexure "A" is the copy of despatch letter by courier. Actually the despatch was made by the courier on 15.7.1998. The third counter affidavit of the same officer shows that letter was received in the concerned section on 17.7.1998 vide Annexure "A". Time was given to the learned Counsel representing the Union of India to clarify this position but he could not do so.

The affidavit of Shri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi sworn on 9.10.1998 is false affidavit. In para 3 of this affidavit it has been falsely deposed that the report of the State Government was sent to the Central Government vide letter dated 18.9.1998 and was received on 21.9.1998. Falsity is further exposed from Annexure "B" to the affidavit of Shri P.D.Shah sworn on 18.2.1999. It is actually a copy of the fax message dated 17.9.1998 through which Shri Jatinderbir Singh was informed that grounds of detention etc. were sent to the Central Government by courier on 14.9.98. Zerox copy of the same was annexed with this fax message. Still the Central Government had no courage to clarify as to what had happened to this report sent on 14.7.1998 by the State Government. It is thus clear that false affidavit was filed by Shri Jatinderbir Singh for which serious note is taken by this Court. It is thus factually established that the report was sent by the State Government well within statutory period and it was received by the Central Government on 17.7.1998. Thus, on this count the impugned order of detention cannot be quashed.

The next contention has been regarding delay in disposal of representation by the Central Government. In para 4 of the counter affidavit of Jatinderbir Singh, it is deposed that one representation dated 31.8.1998 sent by the Advocate of the detenu was received on 11.9.1998. Since, the parawise comments along with the grounds of detention were not received from the State Government, the State Government was requested by fax message dated 11.9.1998 to provide reports and grounds of detention. The reports and grounds of detention were received on 23.9.1998. This para of the affidavit is also false. The counter affidavit of Shri P.D.Shah, Under Secretary dated 5.11.1998 discloses in para 4 that the representation dated 31.8.1998 was received by the Detaining Authority on 3.9.1998 and after processing the same through various departments it was actually rejected on 9.9.1998. It is further deposed in this para that copy of the said representation and parawise remarks were sent to the Central Government by fax letter dated 9.9.1998. The demand of the Central Government for grounds of detention in para 4 of the affidavit of Shri Jatinderbir Singh was uncalled for because the grounds of detention etc. were already sent by the State Government on 14.7.1998 and were received by the Central Government on 17.7.1998. On account of this uncalled for information which was sought by the Central Government that the representation of the detenu could not be

disposed of by the Central Government at the earliest and it was rejected only on 23.9.1998. This delay in disposal of petitioner's representation has rendered the detention order illegal and invalid.

Besides above there are other infirmities in the grounds of detention. It seems from the grounds of detention that the alternative remedies were considered by the Detaining Authority but this consideration was the result of non application of mind. In the grounds of detention, inter alia, it is mentioned by the Detaining Authority that if action under Food Adulteration Act, 1954 is taken there is lengthy legal proceeding and there is provision for an appeal or revision and because of that the petitioner may continue in his activities. The provisions of Food Adulteration Act, 1954 are hardly applicable to the cases where adulteration in diesel is alleged. This, therefore, shows that the Detaining Authority was either unaware or had not applied his mind to the provisions of the Food Adulteration Act. The translated grounds of detention were checked from the original and this recital was found to be correct and not mistaken. This has also rendered the detention order illegal.

Another ground for invalidating the detention order is that all the documents and material which were referred to and relied upon by the Detaining Authority were not furnished to the petitioner. It is specifically mentioned in the grounds of detention that the petitioner had violated condition nos. 5 and 6 of the licence issued under section 18 of the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order 1981. The copies of these two conditions were not supplied to the petitioner. The learned Assistant Government Pleader had admitted after verifying from the record that copies of these two conditions of licence were not supplied to the petitioner. He however argued that since the petitioner is only the Manager and licence had not been issued to him, it was not necessary to supply copies of condition nos. 5 and 6 of the licence to him. He further argued that because the original licence was not seized by the inspecting staff its copy could not be supplied to the petitioner. Both the contentions cannot be accepted. It is settled law that if certain material is referred to and relied upon in the grounds of detention, its copy must be furnished to the detenu and if it is not done valuable right of representation as conferred under Article 22(5) of the Constitution of India is violated. Even if the petitioner was Cashier or Manager copies of conditions no. 5 and 6 of the licence were required to

be supplied to him in as much as the same was referred and relied upon by the Detaining Authority. If the original licence was not seized it is again surprising how violation of condition nos. 5 and 6 of the said licence could be disclosed in the grounds of detention. The learned Assistant Government Pleader contended that there is proforma of licence and from that proforma the alleged breaches were disclosed and mentioned in the grounds of detention. If this is so, then it further speaks non application of mind by the Detaining Authority to actual condition nos. 5 and 6 of the licence in question. There was no justification for the Detaining Authority to rely upon the proforma of licence which is said to be generally issued to such licence holders. Thus, this infirmity is also fatal.

For the reasons stated above the impugned order of detention has been rendered illegal, hence, it is required to be quashed. The writ petition therefore succeeds and is allowed. The impugned order of detention is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Before parting with this judgment I am constrained to remark and take serious view of false affidavit filed by Shri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi. In the circumstances and in the interest of justice it is desirable to give him one more chance to improve. As such, registry will send copy of this judgment to the Secretary, Department of Civil Supplies and Public Distribution, Krishibhavan, New Delhi for information and necessary action.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt